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Stephanne Clark, Clerk  
CheyenneMOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

12-CV-368

United States District Court		District Wyoming
Name (under which you were convicted): Linda Jean Montoya		Docket or Case No.: 1:10-CR-00206-NDF2
Place of Confinement: Victorville, CA SPC		Prisoner No.: 11531-091
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)
v. Linda Jean Montoya		

## MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

US District Court  
District of Wyoming (Casper)

(b) Criminal docket or case number (if you know): 1:10-CR-00206-NDF2

2. (a) Date of the judgment of conviction (if you know): 4/4/11

(b) Date of sentencing: 4/1/11

3. Length of sentence: 108 Months

4. Nature of crime (all counts): Conspiracy to possess with intent to distribute, and to
- 
- distribute methamphetamine.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count  
or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury
- ☐
- Judge only
- ☐

N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒ ~~XXX~~
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒ ~~XXX~~
9. If you did appeal, answer the following:

- (a) Name of court:
- (b) Docket or case number (if you know):
- (c) Result:
- (d) Date of result (if you know):
- (e) Citation to the case (if you know):
- (f) Grounds raised:

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒ ~~XXX~~

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

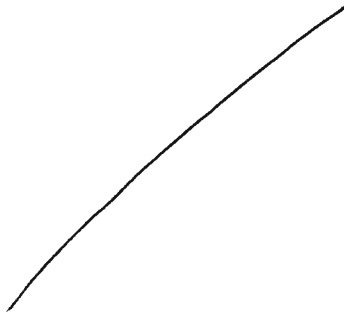
Yes ☐ No ☒ ~~XXX~~

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:



(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

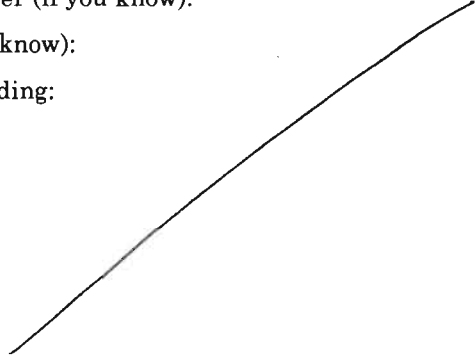
(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:



(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

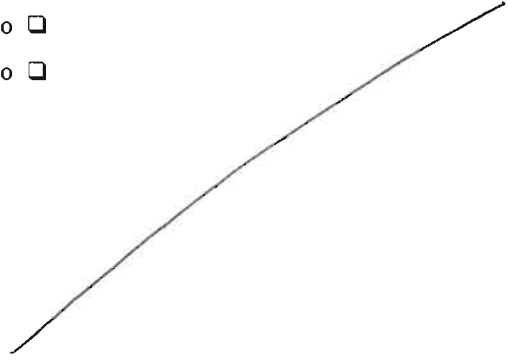
(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐



(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attached

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND THREE:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue.

**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A



**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All of the attached

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Donald L. Fuller - 242 S. Grant Street, Casper, WY 82601-2630

(b) At arraignment and plea: Donald L. Fuller - 242 S. Grant Street, Casper WY 82601-2630

(c) At trial: Donald L. Fuller - 242 S. Grant Street, Casper WY 82601-2630

(d) At sentencing: Donald L. Fuller - 242 S. Grant Street, Casper WY 82601-2630

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N/A



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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

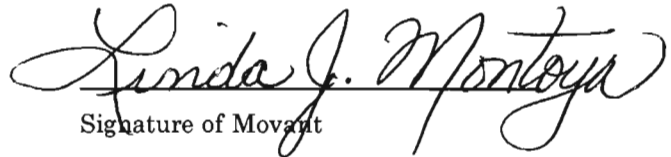
or any other relief to which movant may be entitled.

none

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on  
(month, date, year).

Executed (signed) on 2-9-12 (date).

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

GROUND ONE

Ineffective Assistance of Council

I pled guilty to one count of conspiracy to possess with intent to distribute Methamphetamine. In April 2011, I was sentenced to 108 months in Federal Prison and five years supervised release. I was also ordered to participate while in a 500 hour residential treatment program.

I now understand that there is a madatory minimum in my type of case. My lawyer, Don Fuller, two days before court and the day I was presented with my plea agreement told me this. I had no idea what this meant. All court actions were a mystery to me. As the court knows, there were many people charged in my case or related cases. Only a few of us were ordered to serve prison time. I was arrested and sent to jail May 23, 2010. I was released on bond May 28, 2010. This bond was revoked in October of 2010 as I tested positive for methamphetamine. In November of 2010 I was released to an inpatient treatment program. However, I was discharged from this program for "non compliance" and remanded to county jail in February of 2011. I have been incarcerated ever since.

All of this makes it clear to me and the court, that I had a substantial drug abuse problem. I was not given the proper advice on how to handle my drug abuse problem, arrest, and criminal case. At no time did my attorneys describe to me any options in my case, including the need for me to take responsibility for my actions, disclose the events to my family and discuss with the Federal Government the involvement of others in my case.

I now understand that the terms of my plea made a substantial reduction for assistance possible. I had no idea what that meant, nor did my attorneys ask me or describe this to me. Because of my stress of being incarcerated along with my addiction, I needed and relied on the advice of council.

My co-defendant Kim Croy cooperated right away with the FBI and put most of the blame on me. I only heard about this from other women in the county jail. I asked my lawyer Don Fuller about this several times and stressed to him that I too had important information to discuss with the Government. He told me that the US Attorney "kept bugging" him for this information but that "we were not ready to discuss it yet." Occasionall, Fuller's paralegal would come to the jail and take notes but there was no follow up. This happened for weeks and eventually I was told by my lawyer we needed a written proffer statement and that I would not be able to talk with the government. Finally a very small attemp with poor and little information was sent to the US Attorney. I must have signed it but only now have reviewed this.

I was later told that this was too little, too late and that the government viewed me as uncooperative. Anybody who has seen proffer statements would realize that these were unprofessional and rash attempts. They may have only been done so that Mr. Fuller could claim he had "done something" for me. In fact, my family while trying to obtain copies of these statements from my attorney to review had a difficult time.

I never intended to be uncooperative. I was looking to do anything I could to cooperate and mitigate my prison term.

My lawyer also never provided any sort of sentencing memo to the government. No attempt was made to show my life successess, how I have been for over 50 years, how I have remained married and raised two successful children. Therefore, of course the government was forced to soley look at the crime and the addiction that helped me commit it. The lack of a sentencing memo and proper statement at sentencing proves that I had not only inexperienced council, but ineffective.

#### GROUND TWO

##### Probation Report

There were several problems with my PSI/PSR. I never received a copy of this document prior to my sentencing. I now understand that my lawyer and I could have made changes to the document. In addition, the probation officer was not given the contact information for my two sons. I am certain that had the probation officer spoken with my family at length they would have seen more about my life and situation than the basics contained in the report. While I do think the report understood and contained some helpful information, there simply was not an opportunity for me to show my situation in full detail. I would have welcomed the opportunity to sit down with the probation officer and discuss life events and my future plans. Most importantly the support that I knew I would receive from my husband and children that would have made me an excellent candidate for alternative or reduced sentence. Instead it appears as though my lawyer Don Fuller spoke to US Probation and never included me or my family in these discussions. My husband was contaced by probation but had no idea why and Mr. Fuller never warned him to be ready to be candid.

I also now am aware that the probation report recommends that my term of incarceration be adjusted accordingly should the government file a motion for downward departure. It also contains information and credit for "safety valve" and to this day I do not

know what that is or means. No explanation was given to why I received only a small compensation credit for "safety valve."

I have only now while incarcerated reviewed this very important probation report. Had I been given the opportunity by my attorney, I am sure this report would have painted a more comprehensive picture of who I am.

#### GROUND THREE

##### Sentencing Hearing Issues

Numerous errors were made by my lawyer and myself at my sentencing hearing. My lawyer Don Fuller did not prepare me or my family, who did attend the hearing. In fact, Mr. Fuller often became confused on facts during this hearing. For example, Mr. Fuller did not know there had been a change in the US Attorney, was unsure if certain information was in my PSI, and Mr. Fuller did not tell me I could make any statements to the court. Therefore, I was unprepared and made a very brief comment. None of my family knew to make a statement. We just did not know that this was OK or proper.

Further, it appeared to my family that the judge was looking for Mr. Fuller to make any plea for leniency on my behalf. Instead, there was an argument for a variance in sentencing to 78 months that the court called "compelling" but this was not backed up with any foundational materials or information.

The judge stated my sentence but "it won't be imposed" so you can discuss. At this point there was NO discussion. I was in a jail jumper, very scared and looking for my lawyer to assist me. My family and I are not sophisticated and had no idea that we should have spoken up at this time. The transcript of the sentencing hearing clearly shows to me that something needed to be done. I understand that a court only has so far it can go without the defendant's foundation information and a moving alternative plan with options. I regret this was not done on my behalf and the transcript clearly shows that even the court appeared to notice my lack of assistance.

My family was shocked and heartbroken by this ordeal and the sentencing hearing confirmed our worst nightmare of how much differently this case could have turned out had I understood what I was facing in court. This is no excuse for my criminal behavior, simply an honest observation of how others who have better representation fair.



Relief Sought

I am seeking a modification to my prison term.

Under the guidelines that make me "camp eligible" there is a component of a B.O.P. sentence that would better suit me and the community I harmed. I welcome the chance to serve Federal Prison time as I am doing, along with serving a balance of my sentence on home detention while doing community service. I also would be able to attend drug abuse treatment and maintain a program of sobriety.

My family, including my elderly parents have visited me and supported me during my incarceration. I have the two needed components for a successful re-entry: Family ties and Community relations.

I have demonstrated excellent behavior and cooperation to the staff in Federal Prison at Victorville, CA. I have done and will continue to do my best and be the person society and my family deserve.

The straight prison sentence of 108 months is excessive in that it does not allow any rehabilitation component that I will benefit from, as well as society and my family.

I therefore ask for a sentence modification to allow me to serve a portion of my 108 months on home detention. I understand that the sentence number of months is likely to remain at 108 months and I will fully cooperate with any and all rules that the B.O.P. and U.S. Federal probation will impose on me.

\*end\*